In the Supreme Court of the United States.

OCTOBER TERM, 1920.

CHARLES E. SMITH, PLAINTIFF,
v.
KANSAS CITY TITLE & TRUST COMPANY, et al., defendants.
No. 199.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DIVISION OF THE WESTERN DISTRICT OF MISSOURI.

SUPPLEMENTAL BRIEF FOR THE UNITED STATES AS AMICUS CURIAE.

In view of the order of the court remanding this case for reargument, the following supplemental brief is, by leave of the court, submitted on behalf of the United States.

THE FEDERAL FARM LOAN ACT—ITS PURPOSES AND PROVISIONS.

The broad intention of the Farm Loan Act is the betterment of the system of rural credits in the United States.

The remedial principles which underlie and are embodied in the Act are two:

First, that the permanent solution of the unfortunate existing unsatisfactory condition of rural credits

in the United States lies in cooperative action by the farmers who desire credit.

Second, that the Federal Government must, at least in the beginning, provide the leadership for and the machinery of that cooperative action.

The important provisions of the Act are:

A. That there shall be created at the seat of the Government a "Federal Farm Loan Bureau" which shall be a permanent branch of the Department of the Treasury. (Act, Sec. 3.) At the head of this bureau is the Federal Farm Loan Board, consisting of the Secretary of the Treasury and four members appointed by the President, with the advice and consent of the Senate. Under this Board there is to be a permanent expert staff, consisting of a Farm Loan Registrar for each of the twelve Farm loan districts of the country and a force of appraisers and examiners, and such attorneys, experts, assistants, and other employees as are necessary. (Act, Sec. 3.)

This permanent bureau is specifically charged with the duties (in addition to the supervision and control of cooperative banks and associations hereafter referred to) of giving general publicity as to the system of rural credits established, of "*instructing farmers how to organize and conduct Farm Loan associations*," and "*to disseminate in its discretion information of the further instruction of farmers regarding the methods and principles of cooperative credit and reorganization.*" (Act, Sec. 3.)

The Act thus begins by the creation of a permanent government bureau which is directed to instruct the

farmers in cooperative rural credit and supervise and control the operations of farmers who form associations to borrow money. And this aspect is highly important—while the functions and form of the Farm Loan Bureau under the Act as respects farm credits are reminiscent of and complementary to the work of the Federal Reserve Board, the work of the Farm Loan Board in directing cooperation among its farmers is from the point of view of constitutional law also closely analogous to the functions of the Department of Agriculture in agricultural extension work in the State agricultural colleges and experiment stations. The Federal Farm Loan Bureau is an expert body created to explain cooperative rural credits to the farmers and to direct experiments of the farmers in the actual workings of cooperative rural credits. The Farm Loan Board have educational as well as executive duties.

B. The Act also provides definite machinery under which farmers may cooperate. Section 7 of the Act *et seq.* provides that ten or more farmers in any district who desire to borrow money on agricultural land may join together and form a National Farm Loan Association. Such National Farm Loan Associations are Federal corporations in which the farmers are stockholders. These corporations may borrow money to lend only to their respective stockholders under prescribed machinery and subject to the supervision of the Federal Farm Loan Bureau. Through the machinery thus established the farmer borrowers

join together and become responsible for each other's loans.

C. Section 4 of the Act directs the Farm Loan Board to create twelve districts in the United States and in each district to set up a Federal Land Bank. In the beginning each such bank is started by the Farm Loan Board. Each such Land Bank becomes a Federal corporation with the usual corporate powers of a rural credit bank. The stock of the Federal Land Banks is offered for public subscription to all citizens and states. So much of the stock as is not thus taken is to be subscribed by the United States. Certain of the directors are chosen by the Farm Loan Associations, the balance by the Farm Loan Board. The Federal Land Banks may under restrictions set out in the Act and under supervision of the Farm Loan Board enter upon the business of loaning money on rural credits and particularly it is intended to the Farm Loan Associations.

In effect then this portion of the Act prescribes for formation of cooperative lending associations under Federal direction to which the United States makes definite contributions of capital.

D. The Act (Sec. 16) also provides for formation of any number of Joint Stock Banks (also Federal corporations) which are in all essential respects of like powers and duties as the Federal Land Banks and under like supervision of the Farm Loan Board, but the United States shall not become a stockholder in the Joint Stock Banks.

In effect then the Joint Stock Banks are to be farm credit banks, by them is provided the machinery for loans to farmers, the Federal Government supervises them just like the Land Banks, but makes no contribution to their funds which they may use directly in loans to farmers. It is not perceived that there is any difference in function between the Federal Land Banks and the Joint Stock Banks—their financial operations are to be essentially the same.

E. By Sec. 6 of the Act both Federal Land Banks and Joint Stock Banks may be depositaries of public moneys and general government financial agents.

F. The Act also provides (Sec. 18 *et seq.*) that the Federal Land Banks and the Joint Stock Banks may issue and sell their Farm Loan Bonds to the public and to the Federal Reserve Banks (including all national banks) for investment. These Farm Loan Bonds must be in form specifically approved by the Farm Loan Board, and satisfactorily secured by first mortgages on farm lands. The Farm Loan Bonds issued by the Land Banks and the Joint Stock Banks are to be under substantially the same restrictions and to be in substantially the same form. They perform the same functions in both cases.

It is important to note with some care the precise form of the Farm Loan Bonds and the relation of the Farm Loan Bureau to them, because the United States assumes a great degree of responsibility for these Farm Loan Bonds. By Section 18 of the Act the Federal Land Bank or Joint Stock Bank must first make application to the Farm Loan Bureau for per-

mission to issue Farm Loan Bonds. The Farm Loan Board investigates and appraises the security offered (first mortgages on farm lands) and may permit or refuse permission for such issue. By Section 20 Farm Loan Bonds are physically engraved and prepared for issue at government expense by the Secretary of the Treasury in form approved by the Farm Loan Board, delivered by him to the Farm Loan Board, by the Board (in case it approve an issue) to the issuing Federal Land Bank or Joint Stock Bank. By Section 19 the Federal Land Bank or Joint Stock Bank assigns and transfers the mortgages (which are to be collateral for its Farm Loan Bonds) to an official of the Farm Loan Board who holds them as Trustee for the holders of the Farm Loan Bonds, certifies their correctness and legality—and assumes all the duties of a trustee of a corporate mortgage and very onerous additional duties. Such officer is, on direction of the Farm Loan Board, to call for further security to protect the Farm Loan Bonds and, in the case of the Federal Land Banks, there is added an official certificate as to legality of issue. Under section 22, if any of the collateral be paid off, the official of the Farm Loan Board may require such payments to be paid to him as trustee, and in case of default in these obligations, all Farm Loan Associations, Federal Land Banks and Joint Stock Banks are liquidated under the immediate direction of the Farm Loan Board.

The details of this machinery of operation are of the highest importance because they show that each of the Farm Loan Bonds has the responsibility of the United States behind it to the extent at least that the purchaser has the word of the United States (1) that the issue is wise; (2) that it has good security appraised by the United States, which the United States will look out for to see that it is kept good; (3) that the bond is in proper form and not an over-issue and that the legal technicalities have been complied with; and (4) that the United States will have complete charge of its collection. True, the United States is not technically in the position of maker or guarantor of payment of these bonds at their due date—but the United States certainly accepts complete moral and a limited financial responsibility for every Farm Loan Bond. They are not bonds of the United States, but they are obligations as to which the United States has voluntarily accepted duties which amount to seeing that the investor does not lose—and that is a financial responsibility, none the less so although the United States may not be suable for failure to live up to the obligation. This analysis will become important when we come to consider whether or not these Farm Loan Bonds are Federal instruments—because our opponents treat them as if they were like every other bond issued by a farmer to an investor or in a private transaction where the United States has no interest and no liability.

In effect these provisions provide a special machinery in which the Federal Government participates at every step, by which the cooperative loaning institutions (the Federal Land Banks and the Joint Stock Banks) may become able to obtain, from the investing public, moneys for use in their business of loaning money on farm security.

To sum up, the Act provides for—

(1) A new Government bureau who shall spread the doctrine of cooperative action as the solution of the rural credit problem.

(2) Machinery for cooperative and joint action by farmer borrowers—this (by the Farm Loan Associations) to be carried on by the farmers themselves under direction and supervision of the Farm Loan Bureau.

(3) Agencies (with and without direct financial support from the government) through which loans may be secured. These agencies (the Federal Land Banks and Joint Stock Banks) must also be carried on by the voluntary action of citizens under the direction and supervision of the Farm Loan Bureau.

(4) Machinery by which these two agencies may obtain moneys from the investing public. This machinery (the issue of Farm Loan Bonds) is under the immediate and complete direction and supervision of the Farm Loan Bureau, and for its operation the United States assumes moral and a limited financial responsibility to the investing public who buy the bonds.

In regard to taxation (concerning which this cause is largely concerned) the Act reads as follows:

EXEMPTION FROM TAXATION.

SEC. 26. That every Federal land bank and every national farm loan association, including the capital and reserve or surplus therein and the income derived therefrom, shall be exempt from Federal, State, municipal, and local taxation, except taxes upon real estate held, purchased, or taken by said bank or association under the provisions of section eleven and section thirteen of this Act. First mortgages executed to Federal land banks, or to joint stock land banks, and farm loan bonds issued under the provisions of this Act, shall be deemed and held to be instrumentalities of the Government of the United States, and as such they and the income derived therefrom shall be exempt from Federal, State, municipal, and local taxation.

Nothing herein shall prevent the shares in any joint stock land bank from being included in the valuation of the personal property of the owner or holder of such shares, in assessing taxes imposed by authority of the State within which the bank is located; but such assessment and taxation shall be in manner and subject to the conditions and limitations contained in section fifty-two hundred and nineteen of the Revised Statutes with reference to the shares of national banking associations.

Nothing herein shall be construed to exempt the real property of Federal and joint stock

land banks and national farm loan associations from either State, county, or municipal taxes, to the same extent, according to its value, as other real property is taxed.

As to this section it is to be noted that only one portion is under attack in this cause, i. e., that portion which purports to exempt from Federal and State taxes the particular Farm Loan Bonds issued under the Act which as we have pointed out have the moral and financial responsibility of the United States for their collection. Under the Act such bonds may be issued only by Federal Land Banks and Joint Stock Banks. The other questions of tax exemption arising under Section 26 can not affect the plaintiff in this cause—he is interested only to prevent his trust company from acquiring Farm Loan Bonds.

COOPERATION BY THE STATES IN THE FARM LOAN SYSTEM.

Although the Federal Farm Loan System has been only recently established, many States have made legislative provision for cooperation with its work.

Thus, many States have made the Farm Loan Bonds lawful investments for public and trust funds. The brief filed by the counsel for the Joint Stock Banks gives details of these statutes. They are important because they show that the States, so far as they have acted, have recognized the benefit of the system and are attempting to help it, and these statutes are also important in that they indicate that in certain States the point as to the validity of the exemption of the Farm Loan Bonds from State

taxes has already been settled against the plaintiff in this cause by an authority that he can not consistently question, i. e., the States themselves.

THE POINTS RAISED IN THE PRESENT CAUSE.

The appellant's contentions are two—first, that the organization of the corporate Federal Land Banks and Joint Stock Banks is unconstitutional; second, that the tax exemption of the Farm Loan Bonds is unconstitutional. Those are the only points made in the tribunal of the first instance or presented to this Court. In effect the plaintiff is objecting to illegal bonds issued by illegal organizations under an unconstitutional statute, and in order that he succeed on his own statement of the case he must show that the bonds are thus in effect not tax exempt and that the issuing banks are not valid organizations.

THERE CAN BE NO QUESTION OF THE POWER OF CONGRESS TO GRANT TO THE FARM LOAN BONDS EXEMPTION FROM FEDERAL TAXATION.

Leaving out of consideration for the moment any consideration of the validity of the exemption of the Farm Loan Bonds from State taxation, it is necessary to examine the question of Federal taxation. And at the outset it is important to note that the Farm Loan Bonds are now free of all Federal taxes. The only existing United States tax law under which it might be expected that they would be taxed is the Federal Income Tax Law and that statute (in its definition of gross income, Sec. 213, 4, b) expressly exempts them from taxation. So we start from the position

that under the now existing Federal tax laws Farm Loan Bonds are not taxable, and move to the question whether Congress has the power to promise to continue that exemption.[1]

Congress has the undoubted power, subject only to the constitutional limitation as to uniformity, to declare the objects or subjects which it will tax. This power is plenary and practically not subject to judicial review. Thus, in *Flint* v. *Stone Tracy Company*, 220 U. S. 107, at page 169, the Court said:

> The taxing power conferred by the Constitution knows no limit except that expressly stated in that instrument.

And it is to be remembered that in the Stone Tracy case this Court (p. 173) expressly upheld the constitutionality of the exemption of income of agricultural associations from the Income Tax Act.

Thus Congress clearly has the power to decide not to tax any Farm Loan Bond and it has done just that. And so likewise Congress has the undoubted power not only thus to classify the objects of taxation and leave some entirely free from tax for reasons which seem to it good, but it likewise has the right to lay down policies of tax exemptions, to grant tax exemptions permanently or for a limited period, and to promise tax exemptions. Thus Congress promised an exemption from State taxation on Indian lands for a period of years and

[1] Obviously the question of the validity of the promise is moot until Congress breaks the promise—a contingency which this Court may not willingly assume—and this Court need not consider the contingency at all.

that declaration was held effective by this Court in *U. S.* v. *Rickert*, 188 U. S. 432. Thus this Court early declared the power of the States to grant exemptions from taxation, and went further and held that contracts of exemption thus made by the States were protected by the Constitution of the United States and were not revocable. Such is the holding of *New Jersey* v. *Wilson*, 7 Cranch. 164, where Marshall, C. J., declared unconstitutional an act repealing an exemption from taxation attaching to certain New Jersey lands.

The power of Congress to choose the objects of its own taxation and to pledge the faith of the United States to the continuation of a policy of exemption and to make contracts of exemption is likewise undoubted—not the less so although it may not be protected by any constitutional prohibition against any subsequent Congressional action. The question of exemption of the Farm Loan Bonds from Federal taxation is a pure question of tax policy with which and with the practical wisdom of which the Courts have nothing to do—that point of the case is not open to controversy.

CONGRESS WAS EMPOWERED TO CREATE THE FEDERAL LAND BANKS AND JOINT STOCK BANKS AS FEDERAL CORPORATIONS AS NECESSARY INCIDENTS AND INSTRUMENTS OF THE FARM LOAN BUREAU WHICH IT WAS EMPOWERED TO CREATE.

These Federal Land Banks and Joint Stock Banks are the instruments by which the Farm Loan Bureau carries on its work of organizing and obtaining farm credits. They find constitutional sanction in the

power of Congress to establish the Farm Loan Bureau and give it "necessary and proper" instruments to do its work.

The Farm Loan Bureau is primarily a department composed of Federal officials. Their salaries and expenses are paid from the public moneys of the United States out of moneys specifically appropriated from time to time for that purpose. Public moneys are appropriated that the United States may subscribe to the capital of the Federal Land Banks, which in turn will use that money in their business. There can be no substantial doubt of the constitutional power of Congress to establish and make appropriations for this bureau of farm credits. If a general power in the United States to raise moneys and to expend them for any purpose that Congress deems public be not inherent in the fact of its sovereignty as a government, such power is clearly derivable from Article 1, Section 8, subdivision 1, of the Constitution, which authorizes Congress to—

> lay and collect tax duties and imposts, to pay the debts and provide for the common defense and the general welfare of the United States.

Subject only to certain limitations as to uniformity and apportionment of taxes, and that it be the "general" welfare which is the object of the expenditures, that power is plenary and in no wise limited to those subjects which the United States (as opposed to the States) may or should regulate or control. (See *McCray* v. *U. S.*, 195 U. S., 27; *Veazie* v. *Fenno*,

8 Wall. 533, as to the use of the taxing power for the "general welfare.")

The point is of sufficient importance to justify elaboration. In the *McCray* case this Court upheld the plenary power of the United States to lay a tax which was in fact prohibitory on oleomargarine colored in a particular way—although the power to regulate the manufacture and sale of oleomargarine was a topic entirely within the reserved legislative power of the States. Just so the United States would have had the power (and for the same reasons) to appropriate Government moneys for and to have created an oleomargarine bureau which should educate and practically demonstrate the wise methods of manufacture of oleomargarine.

This power in the United States to expend its moneys for the general welfare—so often discussed by Monroe and Hamilton—has been upheld by this Court in justifying the use of the Federal power of eminent domain in projects of general interest—such as irrigation and roads. This Federal power is not a power which intrenches upon the reserved powers of the States over the subjects of legislation reserved to them by the Constitution, nor may the United States because of it legislate as to how farm loans shall be made in any State by the citizens of that State—that power is clearly reserved to the State. That is the point, and the whole point of *Kansas* v. *Colorado*, upon which our opponents so much rely. But the constitutional power to appropriate does

authorize the creation of a Government bureau which shall operate for the general interest of the farmers (or any other occupation) in the States, educating and instructing them and helping them to better their condition, and the power to appropriate does authorize, not only the hiring of officials, but the use and creation of any other agencies, corporate or personal, "necessary and proper" to that end.

Were there conceivable doubt upon that inference as an original question it must be regarded as settled by the long continued practice of the Congress and the Executive, which has now firmly embedded that principle in our governmental structure. The Department of Agriculture is created on that theory. The Department is defined in the Revised Statutes, Section 520, as follows:

> There shall be at the seat of Government a Department of Agriculture, the general design and duties of which shall be to acquire and to diffuse among the people of the United States useful information on subjects connected with agriculture in the most general and comprehensive sense of that word and to procure, propogate, and distribute among the people new and valuable seeds and plants.

There are the following Bureaus in the Department: Weather Bureau, Bureau of Animal Industry, Bureau of Plant Industry, Bureau of Chemistry, Bureau of Soils, Bureau of Entomology, Bureau of Biological Survey, Bureau of Crop Estimates, Office of Markets and Rural Organization, Office for the Enforcement of the Insecticide Act.

The following are among the duties prescribed by statute to be performed by the Department of Agriculture: Purchase and distribution of vegetable, field, and flower seeds; plants, shrubs, vines, bulbs, and cuttings shall be of the freshest and best obtainable varieties and adapted to general cultivation; preservation, distribution, introduction, and restoration of game birds and other wild birds.

More significant perhaps is the work of the Department of Agriculture in agricultural extension work in experiment stations and in the agricultural colleges, by direct teaching by department officials in the several states and by the furnishing of federal funds of large amount each year (directly appropriated out of public moneys) for the operation and endowment of agricultural colleges, in the states and in cooperation with the states. (See Compiled Statutes, 1916, Sec. 88776, *et seq.*)

Built upon the same theory the Office of Education is (Compiled Statutes, 1916, Sec. 765) organized to collect statistics and facts and

> diffuse such information * * * as shall aid the people of the United States in the establishment and maintenance of efficient school systems, and otherwise promote the cause of education throughout the country.

The Bureau of Mines is established in the Department of the Interior likewise to collect information and disseminate it. Compiled Statutes 784. It charges fees for mineral tests made for individual citizens (Sec. 787) and has mining experiment

stations and safety stations in the several important mining regions (Sec. 787a).

The Department of Labor operates largely or almost wholly in the field where the states alone have the power to legislate as to labor. Thus by Section 964 of the Compiled Statutes there is established in that department "the Children's Bureau" to investigate all matters of child welfare "among all classes of our people."

The Public Health Service under Compiled Statutes Sec. 9128 is to study and investigate "the diseases of man—" and issue information for the use of the public.

It is needless further to multiply the instances that exemplify the constitutional power of Congress to create governmental agencies which operate in various fields of public interest, not by administering laws laid down by Congress for the conduct of the citizens of the States in those fields, but under and in accordance with the laws of the several States, for the public welfare, sometimes in cooperation with the States, oftener in matters of national import where the States can not efficiently act. Under that doctrine Congress had the power, if it saw fit to appropriate public moneys to loan to farmers, to create agencies and to furnish them moneys for that purpose, to make use of existing agencies formed pursuant to State laws (as the agricultural colleges of the States which receive Congressional appropriations), and we confidently argue, to create new corporate agencies of its own which should exemplify

and make possible the effective organization of cooperative rural credits which it is the duty of the Farm Loan Bureau to expound. The agricultural experiment stations and the experiment stations of the Bureau of Mines perform the same functions in their respective fields as the Joint Stock Banks and the Federal Land Banks in their field. And the question whether these instrumentalities shall be banks or corporations, or State or Federal corporations, are merely questions of the choice of means by which Congress furthers the national interest with national funds—the argument of our opponents is reminiscent of the scholastic doctrines which called forth *McCulloch* v. *Maryland*. If Congress deems wise it may create and use a corporate instrumentality to carry out its public purposes in the expenditure of its appropriated funds. The Joint Stock Banks, the Federal Land Banks, and the Farm Loan Associations are such instrumentalities.

The general purposes of the Farm Loan Act might have perhaps been carried out without the Federal incorporation of Federal Land Banks and Joint Stock Banks and Farm Loan Associations. Perhaps the organizers sent out by the Farm Loan Bureau, instead of creating corporations to do the banking business, might have formed partnerships or, more probably, corporations or banks under the laws of the several States, but because continued and complete control of these cooperative credit organizations, particularly in the beginning, was essential to their efficiency, it was better that these corporations

should be Federal. And in that such Federal corporate instruments were, and were decided by Congress to be, better and more efficient instruments, lies their constitutional justification. The fact that they are to operate in a State-controlled field, under State laws, and perhaps in place of State corporations which might otherwise exist, is of no importance, because the same thing is broadly true of every "general welfare" agent of the Federal Government, i. e., that he acts in a State-controlled field, under State laws, and if he were not there some other agent who would be a State agent might be doing the same or similar work.

Such is the first simple justification of the constitutionality of the creation of the Federal Land Banks and the Joint Stock Banks. In the argument up to this point we have assumed that the Federal Land Banks and the Joint Stock Banks and the Farm Loan Bureau work wholly in a State-controlled field. That is, of course, true of their function of helping individual farmers. But it is not true of all their activities. The Farm Loan System has substantial activities and duties in a field of activity entirely controlled by the Federal Government, where the Federal Government has the power and the duty to regulate the conduct of the citizens of the States, and in which the States have no rights. These also completely justify the creation of the Joint Stock Banks and the Federal Land Banks.

This field of activity, which under our constitutional system lies with the Federal Government, is the field of credit.

THE CREATION OF THE FARM LOAN BANKS SYSTEM, THE FEDERAL LAND AND THE JOINT STOCK BANKS IS A CONSTITUTIONAL EXERCISE OF THE POWERS OF CONGRESS OVER THE CREDIT OF THE NATION.

The Joint Stock Bank and the Federal Land Bank stand exactly upon the same constitutional basis as the National Banks whose credit activities they supplement; like the National Bank and its stock, they and their Farm Loan Bonds are "Federal instrumentalities" which Congress may create and protect from State taxation or interference. That the Congress which passed the Farm Loan Act so deemed them "Federal instrumentalities" is apparent from the use of that term in Section 26 of the Act (providing for tax exemption) and from their designation as "financial agents for the United States" (in the title of the Farm Loan Act), from the grant to them of limited banking powers (as to receipt of deposits, purchase of United States Bonds, Section 13 of the Act), by establishing deposit relations with the Reserve system (Sec. 13), by making Farm Loan Bonds eligible for purchase by members of the Federal Reserve System (Sec. 27), by making the banks of the Farm Loan System depositaries of Government funds (Sec. 32). It is impossible to resist the conclusion that it was the purpose of the Farm Loan Act to create a system of farm loan banks which should supplement, be connected with, and be part of the national credit and banking system of the United States. And the same constitutional powers that justify the National Banking system justify the Farm Loan system. Nor may this

Court consider whether or not the link between the two systems is absolutely essential, or whether the other objects which Congress intended under the Farm Loan Act could have been obtained without this linking of the two systems—so long as Congress, acting within the realm of reason, joined those two systems it was acting within its constitutional power.

The financial system and the financial machinery of a country forms the basis of its general prosperity; the strength and flexibility of that financial system will directly affect the financial operation of the Government in its own fiscal affairs. There are two principal methods of doing business involved in the commercial system of every people. The first involves dealings upon a cash or currency basis, the second upon credit. It was apparent to the framers of the Constitution that currency must be uniform throughout the country in order to establish a sound basis for national trade and commerce, and thus in the Constitution Congress was given power "to coin money, regulate the value thereof and of foreign money, and fix the standard of weights and measures." That power, and the power to regulate trade and commerce between the States and with foreign countries, and the power to create fiscal agencies have been broadly construed by this Court to authorize Congress to provide a sound currency for the entire country and to secure the benefit of it to the people by appropriate legislation. It was on so broad a ground that *Veazie Bank* v. *Fenno*, 8 Wallace, 533 was decided. (The precise point was the constitu-

tionality of the prohibitive tax on notes issued by State banks.) The same general doctrine was the basis of the *Legal Tender Cases*, 12 Wall. 457. See opinion of Mr. Justice Bradley for the Court, pp. 555, 562–564. There he emphasizes the fact that the provision of a proper currency meant the necessity for providing of currency sound against threatened collapse of commercial credit. Thus, he says:

> When the ordinary currency disappears, as it often does in time of war, when business begins to stagnate and general bankruptcy is imminent, then the Government must have power at the same time to renovate its own resources and to revive the drooping energies of the Nation by supplying it with a circulating medium. What that medium shall be, what its character and qualities, will depend upon the greatness of the exigency and the degree of promptitude which it demands. These are legislative questions. The heart of the Nation must not be crushed out. The people must be aided to pay their debts and meet their obligations. The debtor interest of the country represents its bone and sinew, and must be encouraged to pursue its avocations. If relief were not afforded universal bankruptcy would ensue, and industry would be stopped, and government would be paralyzed in the paralysis of the people. * * *

That opinion has been construed and rightly construed as expounding the power of Congress generally to regulate the machinery of commercial credit as well as currency for the Nation. It is on that

theory that the system of National Banks was built. The National Banks like Federal Land Banks and Joint Stock Banks have functions as financial agents and government depositaries but their chief function and the one for which they are constructed is to furnish the machinery for and facilitate commercial credit on a national scale. They are subject only to federal jurisdiction and are essentially national institutions. Thus in *Talbot* v. *Silver Bow County*, 139 U. S. 438, this Court said (p. 442):

> The national banking system was nat onal in its design, coextensive in its operation with the territorial limits of the United States and intended to be the banking system for the whole country, Territories as well as States. * * * These various provisions, scattered through the entire body of the statute respecting national banks, emphasize that which the character of the system implies—an intent to create a national banking system coextensive with the territorial limits of the United States, and with uniform operation within those limits, to establish everywhere throughout the United States banks with the security which a national examination gives, and furnish a currency of uniform value, the same in Arizona as in New York, in Territory as in State.

It has only been, however, with the creation of the Federal Reserve System that it has been generally understood how broad in extent is the national power over currency. After long experience under the relatively inefficient system previously existing, with

a currency based upon the issue of Government bonds and a credit system built upon disconnected and uncooperating banks, the Federal Reserve System was created. By the Reserve System, the basis of the national currency was changed from the inelastic basis (the national bonds) to the elastic basis of the commercial credit of the country and the unrelated Government agents (the National Banks) were brought together into one cooperative system through the Federal Reserve Banks. Thus the constitutional power to regulate the monetary currency has been interpreted and rightly interpreted to give to Congress power to create Federal instruments which are in fact the machines through which credit and the currency are obtained by the Nation as a whole.

In fact the Government of the United States has found that in order to create a sound monetary basis it was necessary to build a complete national system of credit machinery. That system of credit machinery was the Federal Reserve System. The Federal Reserve System admittedly failed as a complete system for credit machinery for the whole country because of its inability largely to absorb or to care for the question of agricultural credit. Under the Reserve Act the Reserve Banks were strictly limited in their credit allowances to agriculture, and it is to fill that lack that the Federal Land Banks and the Joint Stock Banks were created to establish the national basis for agricultural credit. Thus, the machinery of national credit is a Federally controlled

field which, under its constitutional power over the money of the country, Congress has the complete right to regulate—simply because the money of the country and the credit of the country are, always and particularly in this modern day, parts of one and the same field. To deny to Congress the right to add to its credit regulation by creating the Farm Loan System (to supplement the Federal Reserve System) would be to deny to a substantial element of the borrowers of the country the benefits that come from national regulation of currency and credit. The Farm Loan System is firmly and necessarily a part of the monetary system of the country and thus the action in creating the Federal Land Banks and Joint Stock Banks was justified since they were the Federal agents in a Federally controlled field of legislation.

THE EXEMPTION OF THE FARM LOAN BONDS FROM STATE TAXATION IS WITHIN THE POWER OF CONGRESS.

Having shown the constitutionality of the creation of the Federal Land Banks and the Joint Stock Banks as Government agents, and having shown that their exemption and the exemptions of the Farm Loan Bonds from Federal taxation is clearly constitutional, we may proceed to the last question of the case—the validity of the exemption of the Farm Loan Bonds from State taxation.

There have been a number of adjudicated cases in this Court which make definite the taxing powers of the States over the property and agencies of the United States and *vice versa*. Beginning with the

announcement of *McCulloch* v. *Maryland*, a rule of administration has grown up, and is now firmly established, that the properties, agencies, instrumentalities, and obligations of the State and Federal Governments are respectively exempt from each other's taxation, and the application of the rule does not rest upon the fact that in any particular instance great or little harm would be caused by the exercise of the tax authority. The rule which takes its origin in the structure of the dual sovereignty under which we live is an absolute rule defining the scope of the taxing authority in either State or Nation.

Thus in *Pollock* v. *Farmers Loan and Trust Co.*, 157 U. S., 429 (the Income Tax Case), at page 583, this Court, considering the constitutionality of the income tax on municipal obligations held by the Farmers' Loan and Trust Company, again affirmed that income derived from such municipal obligations must be free of Federal tax. The Court said, page 584:

> As the States can not tax the powers, the operations, or the properties of the United States, nor the means which they employ to carry their powers into execution, so it has been held that the United States have no power under the Constitution to tax either these instruments or property of a State.

Thus, the bonds and other obligations of the United States or of the States or municipalities have been held to be completely tax exempt, and thus also, property owned by the United States or the States has been repeatedly held mutually tax exempt.

In *Van Brocklin* v. *State of Tennessee*, 117 U. S. 151, lands in Tennessee which had been purchased by the United States for tax were held to be not liable to State tax while owned by the United States. In that case Judge Gray, giving the opinion of the Court (p. 155), said:

> The States have no power by taxation or otherwise to retard, impede, burden, or in any manner control, the operations of the constitutional laws enacted by Congress to carry into execution the powers vested in the general Government.

And again (p. 158):

> The United States do not and can not hold property, as a monarch may, for private or personal purposes.

This Court has held in *South Carolina* v. *United States*, that the property of the State of South Carolina used by the State in its liquor monopoly operation was held by it in its private, not its governmental capacity, and therefore was not exempt from Federal taxation. This opinion called for the most vigorous dissent. But the limitation of the doctrine is not here important because this Court has clearly (in the *Van Brocklin* case cited *supra*, 117 U. S. at p. 158) held

> the United States do not and can not hold property as a monarch may, for private and personal purposes.

Questions of greater difficulties have arisen where the tax has been on an agency or instrumentality

of the Government. Thus in *Collector* v. *Day*, 11 Wall. 113, at an early date this Court declared that it was not competent for Congress to impose a tax on the salary of a judicial officer of a State, and from the very first it has been repeatedly held that a tax on a banking agency of the United States may not be levied by a State without the consent of the United States. The citation of several cases will illustrate the limitations on the taxation of agencies and instrumentalities.

In *Ambrosini* v. *United States*, 187 U. S. 1, one Ambrosini was indicted in a Federal District Court, found guilty, and fined for executing a bond to the State of Illinois without affixing the United States revenue stamp to the bond. The bond was given to the State of Illinois pursuant to an act for the licensing of liquor dealers which required the giving of the bond as the prerequisite of obtaining a liquor license. The Court construed the Illinois statute as a regulation of the liquor traffic and clearly within the police powers of the State, saying (p. 7):

> The granting of the license was the exercise of a strictly governmental function, and the giving of the bond was part of the same transaction. To tax the license would be to impair the efficiency of State and municipal action on the subject and assume the power to suppress such action. And considering license and bond together, taxation of the bond involves the same consequences. In themselves the bonds were not mere incidents of the regulation of the traffic, but essentially

safeguards against its evils and governmental instrumentalities of State and of city, as authorized by the State, to insure the public welfare in the conduct of the business, although the business itself was not governmental. They were not mere individual undertakings to secure a personal privilege as suggested by the Court below, but means for the preservation of peace, the health, and the safety of the community in compelling strict observance of the law and remedying injurious results.

The general principle is that as the means and instrumentalities employed by the general Government to carry into operation the powers granted to it are exempt from taxation by the State, so are those of the States exempt from taxation by the general Government. It rests on the law of self-preservation, for any Government whose means employed in conducting its strictly governmental operations are subject to the control of another and distinct government exists only at the mercy of the latter. Nelson, J., *Collector* v. *Day*, 11 Wall. 113.

This Court has declined to hold that the profits which an independent contractor makes out of doing business with the United States are exempt from State taxation.

Fidelity and Deposit Co. v. *Pennsylvania*, 240 U. S. 349.

Baltimore Shipbuilding & Dry Dock Co. v. *Baltimore*, 195 U. S. 375 (*semble*).

In the *Fidelity and Deposit* case the contractor served the United States only by furnishing surety bonds, and in the second case the only interest which the United States had in the property taxed was a possible reversionary right in the land in question.

But where the independent agent takes over and assumes a duty which lies upon the United States this Court has squarely held that no tax may be laid by a State upon the business of that independent agent by which it was, under contract with the United States, carrying out the obligation of the United States.

Choctaw & Gulf Railroad v. *Harrison*, 235 U. S. 292, is a case where the appellant sought to enjoin a tax collection claimed by Oklahoma based upon gross sales of coal dug from mines belonging to the Choctaw and Chickasaw Indians which the appellant leased and operated. It appeared that by an Act of Congress known as the Curtis Act, title to the coal lands was common property of the members of the Indian tribes, that the revenues from them should be used for the education of their children and that the mines should be operated under the protection of the Secretary of the Interior and coal royalties on leases paid to the United States. In harmony with those provisions the railroad leased the mines. The Court said, page 298:

> From the foregoing, it seems manifest that the agreement with the Indians imposes upon the United States a definite duty in regard to opening and operating the coal mines upon

> their lands and appellant is the instrumentality through which this obligation is being carried into effect. Such an agency can not be subjected to an occupation or privilege tax by a State. * * * It is unnecessary to consider the power of the State of Oklahoma to treat coals dug from mines operated by the appellant as other personalty and to subject them to uniform ad valorem tax, for it seems to us clear that the act of 1908 provided for no such imposition. * * * In effect the Oklahoma tax act prescribes an occupation tax. In accepting as true the allegations of appellant's bill, we think it can not be lawfully subjected thereto.

Practically the same question arose in a later case on similar facts where the tax was not upon gross sales but directly upon a lease from the Federal Government to the mine operator. In *Indian Oil Company* v. *Oklahoma*, 240 U. S. 522, the State of Oklahoma has levied a tax upon a lease of oil lands made by the Osage Indians under Federal authorization. This court then held:

> that the lessee is a Federal instrumentality and the State therefore could not tax its interest in the leases directly or indirectly through a tax on the capital stock.

The case goes on the authority of *Choctaw, etc.*, v. *Harrison, supra*.

In *United States* v. *Rickert*, 188 U. S. 432, a somewhat similar question involving the Indian rights came before this Court. There was under consideration an act of Congress of 1887 under which the

United States allotted certain lands to the Indian allottees who should occupy them and at the end of twenty-five years receive completed patents for them, the title to be held in trust for the allottees by the United States during that period. The act provided, among other things, that neither the lands allotted or the permanent improvements thereon or the personal property intended for use on the lands obtained from the United States and used by the Indians during the period of trust, were subject to State or local taxation. In this case the United States under the direction of the Attorney General successfully maintained a suit to enjoin the collection of such taxes by the County of Roberts in South Dakota against the Indian beneficiaries of the act. The tax exemption was held good, this Court saying clearly that while these lands were "held by the United States in execution of its plans relating to the Indians" there was no power in South Dakota to tax the lands "until at least the fee was conveyed to the Indians." This Court said, page 437:

> To tax these lands is to tax an instrumentality employed by the United States for the benefit and control of this dependent race, of which this Court has said that "from their very weakness and helplessness so largely due to the course of dealing with the Federal Government with them and the treaties in which it has been promised there arises the duties of protection, and with it the power." * * *. So that if they may be taxed then the obligations which the Government has assumed in reference to these Indians may be entirely

> defeated; for by the act of 1887 the Government has agreed at a named time to convey the land to the allottee in fee, discharged of the trust "and free of all charge or encumbrance whatsoever." To say that these lands may be assessed and taxed by the County of Roberts under the authority of the State is to say that they may be sold for taxes and thus become so burdened that the United States could not discharge its obligations to the Indians without itself paying the taxes imposed from year to year and thereby keeping the lands free from encumbrance.

Citing the *Van Brocklin* case, *supra*, and *McCulloch* v. *Maryland*.

And the court also reached the conclusion that the permanent improvements and personal property used by the Indians were on the same footing as the land as to the tax exemption.

This *Rickert* case bears many aspects of similarity to the present case. Just as in the *Rickert* case, the Government, in pursuance of its plans for the Indians assumed an obligation that the Indians should finally get their land free of encumbrance, so in the case of the Farm Loan Bonds the United States, acting in the general interest, undertakes the obligation toward the investing public that the investor shall have a sound bond and collect it. In each case the tax exemption created by express words of the congressional statute was intended to prevent the States from taxing Federal instrumentalities which were to carry out the obligation which the United States assumes, and in each case, once it be granted

that the United States has power to undertake the obligation, the constitutional right to protect the obligation by the declaration of exemption from State taxation must follow. The only constitutional question which can arise in this Court is whether the method of protection of the obligation assumed by the United States (by tax exemption) is a method which Congress may, within the realm of reason, deem a proper method of protection—and on that point the *Rickert* case is a persuasive authority, since in the *Rickert* case this Court upheld the action of Congress in protecting another similar instrumentality by the same method.

Applying these doctrines to the present case, it is clear when we consider the Farm Loan System as a whole, of which the Farm Loan Bonds are an essential part, that that system is a federal agency acting in the national interest, and that every part of that agency, unless otherwise permitted by Congress, must be free of State tax. The Farm Loan Bureau is primarily composed of officers of the United States, they and their activities and the instruments with which they work, including the Land Banks, the Farm Associations, and the Farm Loan Bonds, are tax-free agents of the United States used by it not only for the purposes of the Farm Loan Bureau, but in the case of the Federal Land Banks and Joint Stock Banks as general banking agents of the United States, and as part of its national credit system.

And it is also clear, when we examine the Farm Loan Bond microscopically in the performance of its particular function in the system, that it is an

instrumentality of government of the United States just as in the *Ambrosini* case the bond which the liquor dealer had to give before he could get his Illinois license to sell liquor was part of the machinery of government. The bond in each case may be the bond which represents the ultimate obligation of a private individual out of a transaction in which he is engaged wholly for his own profit; but nevertheless it is in each case the instrumentality in a governmental function.

In answering this branch of the case the appellant has looked upon the Farm Loan Bonds as if they were purely private bonds given by the farmer to the investor. It is of course quite true that by the giving of the Farm Loan Bond the Joint Stock Bank will presumably profit and the ultimate holder will presumably profit. And so the appellant would make it seem a purely private business, but the interest of the United States in those instrumentalities (which are essential machinery in the Farm Loan System) is not in the least private, but purely governmental. Nor is it the less governmental (as the appellant erroneously argues) because the activity of the United States in this field of Farm Loan credits is not primarily a legislative activity in a field where the United States has the duty or power of regulation, but is a governmental activity by the United States in a field where the United States has not regulative power and the States have regulative power. Or, to put it in other terms, the fact that the activity of the United States is in a State-controlled field where its Federal function is primarily in educating and

persuading the citizens to undertake an object for their general welfare, does not show that it is a private activity of the United States. The United States' activity in organizing the cooperative effort of the farmers and in guiding and protecting that cooperative action is in no sense private, but wholly governmental. The fact that the Constitution does not place a duty on Congress thus to act, does not make its action private. The United States can not have a private activity (just as in the *Van Brocklin* case it can not have property in its private capacity); its work is governmental and its agency is governmental in every field in which it may engage—quite as much so when the Federal agents are working for the general welfare as where the Federal agents are carrying out the laws of the United States in a field such as interstate commerce, where the United States has the duty of legislation.

And in another—and very important—aspect it would seem that the Farm Loan Bonds are clearly an instrumentality of government which apart from any declaration in the Act would be exempt from state taxation. In the case of the coal land of the Choctaw Indians above referred to this Court decided that the business of the coal operator was exempt from state taxation because that coal operator was carrying out the obligation of the United States to the Indian—an obligation which was simply the general one of the United States toward its ward which had crystallized in a contract with the tribe. Just so in this case, by the Farm Loan Bond the Federal Land Bank or the Joint Stock Bank carries

out the obligation which the United States has assumed supervision of and responsibility for—i. e., that the bond should be validly issued, that the security should be good and kept good, and that the bond should ultimately be paid. The performance by the Federal Land Bank or the Joint Stock Bank of its obligations under the Farm Loan Bonds which it issues are the way and the only way in which the United States may see performed the obligations which it has voluntarily assumed to the investing public on account of those bonds. True the United States has not signed its name on the Farm Loan Bonds; true it has not promised that they shall be paid on a day certain; but just as in the *Choctaw* case it has assumed an obligation and it is using an instrumentality to carry it out, that instrumentality is no more and no less private than in the *Choctaw* case. The Company that leased the *Choctaw* lands to dig coal from them was a private trading company making money from its coal operation, just as and no more than a stockholder of the Joint Stock Bank may make money from the operation of that bank. The obligation of the United States in the *Choctaw* case, just as in the case of the Farm Loan Bond, was voluntarily assumed by the United States, and both were in the governmental field.

So that thus, whether we consider the Farm Loan Bond as part of the Farm Loan System and the national credit system and see it thus a Federal agency, or whether we consider it as part of an investment of Federal funds in the activity of Federal Government in a system in the general welfare, or

whether we examine it microscopically and find it an instrument for carrying out Federal obligations to see the Farm Loan Bond kept good and paid—in every aspect the Farm Loan Bonds appear as Federal instrumentalities and their tax exempt feature following without regard to the particular language of the Farm Loan Act granting that exemption.

But the Act itself furnishes a further reason for the exemption. By that Act (Section 26) Congress has declared Joint Stock Banks, Federal Land Banks and Farm Loan Bonds Federal instrumentalities. By that Act and that Section 26 it has specifically declared its judgment that the exemption is necessary, and in all the adjudicated cases without exception the Courts have followed and this Court has followed, the announcement of the legislative branch as to the need of exemption and has given great weight in particular to the Congressional statements of intention. And so long as the Congressional declaration that its instrumentality needs exemption be not absurd or unreasonable this Court will not consider whether the Congressional judgment is wise or unwise; but simply whether it is in the realm of reason. And certainly when we realize that Congress might, under clear constitutional authority, have used the funds of the United States directly in making advances of funds to the farmers and might have issued, not the Farm Loan Bonds, but its own specific obligations payable on a day certain to raise the necessary moneys to make these loans, and that its own obligations would have been

clearly exempt from State taxation, it seems absurd to say that the accomplishment of that result by the Federal Government by the bond of Farm Credit Banks created by the Federal Government, secured by the Government's own moral and, to a limited degree, financial responsibility may not carry a like exemption. The choice of means of raising the money lay in Congress and in view of the patent necessity not only that the Farm Loan Bonds should bear a low rate of interest, but that they should be popularized—that the system as a whole should work—there can be little question of the wisdom of the course which Congress adopted. And the argument of the appellant that these Farm Loan Bonds are private bonds or that the function of the Government toward them is in some way a private and not a governmental function is entirely in error.

CONCLUSION.

It is respectfully submitted that the Federal Land Banks and the Joint Stock Land Banks were validly created by the Farm Loan Act and that the exemption of the Farm Loan Bonds from taxation provided in the act is valid and that the act is in all respects constitutional.

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